

subgroups, respectively, for the purpose of reporting AYP at the State level under section 1111(h)(1)(C)(ii) of the Act;

(B) An LEA may include the scores of former limited English proficient students and former students with disabilities as part of the limited English proficient and students with disabilities subgroups, respectively, for the purpose of reporting AYP at the LEA and school levels under section 1111(h)(2)(B) of the Act; but

(C) A State or LEA may not include the scores of former limited English proficient students or former students with disabilities as part of the limited English proficient or students with disabilities subgroup, respectively, in reporting any other information under section 1111(h) of the Act.

(g) *Transition provision regarding modified academic achievement standards.* The Secretary may provide a State that is moving expeditiously to adopt and administer alternate assessments based on modified academic achievement standards flexibility in accounting for the achievement of students with disabilities in AYP determinations that are based on assessments administered in 2007–08 and 2008–09. To be eligible for this flexibility, a State must meet criteria, as the Secretary determines appropriate, for each year for which the flexibility is available.

(h) *Student academic growth.* (1) A State may request authority under section 9401 of the Act to incorporate student academic growth in the State's definition of AYP under this section.

(2) A State's policy for incorporating student academic growth in the State's definition of AYP must—

(i) Set annual growth targets that—

(A) Will lead to all students, by school year 2013–2014, meeting or exceeding the State's proficient level of academic achievement on the State assessments under § 200.2;

(B) Are based on meeting the State's proficient level of academic achievement on the State assessments under § 200.2 and are not based on individual student background characteristics; and

(C) Measure student achievement separately in mathematics and reading/language arts;

(ii) Ensure that all students enrolled in the grades tested under § 200.2 are included in the State's assessment and accountability systems;

(iii) Hold all schools and LEAs accountable for the performance of all students and the student subgroups described in § 200.13(b)(7)(ii);

(iv) Be based on State assessments that—

(A) Produce comparable results from grade to grade and from year to year in mathematics and reading/language arts;

(B) Have been in use by the State for more than one year; and

(C) Have received full approval from the Secretary before the State determines AYP based on student academic growth;

(v) Track student progress through the State data system;

(vi) Include, as separate factors in determining whether schools are making AYP for a particular year—

(A) The rate of student participation in assessments under § 200.2; and

(B) Other academic indicators as described in § 200.19; and

(vii) Describe how the State's annual growth targets fit into the State's accountability system in a manner that ensures that the system is coherent and that incorporating student academic growth into the State's definition of AYP does not dilute accountability.

(3) A State's proposal to incorporate student academic growth in the State's definition of AYP will be peer reviewed under the process established by the Secretary under section 1111(e)(2) of the Act.

(Approved by the Office of Management and Budget under control number 1810–0576)

(Authority: 20 U.S.C. 6311(b)(2), (b)(3)(C)(xi); 7861)

[67 FR 71717, Dec. 2, 2002, as amended at 71 FR 54193, Sept. 13, 2006; 72 FR 17780, Apr. 9, 2007; 73 FR 64510, Oct. 29, 2008]

§ 200.21 Adequate yearly progress of a State.

For each State that receives funds under subpart A of this part and under subpart 1 of part A of Title III of the ESEA, the Secretary must, beginning with the 2004–2005 school year, annually review whether the State has—

§ 200.22

(a)(1) Made AYP as defined by the State in accordance with §§200.13 through 200.20 for each group of students in §200.13(b)(7); and

(2) Met its annual measurable achievement objectives under section 3122(a) of the ESEA relating to the development and attainment of English proficiency by limited English proficient students.

(b) A State must include all students who were enrolled in schools in the State for a full academic year in reporting on the yearly progress of the State.

(Authority: 20 U.S.C. 7325)

[67 FR 71717, Dec. 2, 2002]

§ 200.22 National Technical Advisory Council.

(a) To provide advice to the Department on technical issues related to the design and implementation of standards, assessments, and accountability systems, the Secretary shall establish a National Technical Advisory Council (hereafter referred to as the “National TAC”), which shall be governed by the provisions of the Federal Advisory Committee Act (FACA) (Pub. L. 92-463, as amended; 5 U.S.C. App.).

(b)(1) The members of the National TAC must include persons who have knowledge of and expertise in the design and implementation of educational standards, assessments, and accountability systems for all students, including students with disabilities and limited English proficient students, and experts with technical knowledge related to statistics and psychometrics.

(2) The National TAC shall be composed of 10 to 20 members who may meet as a whole or in committees, as the Secretary may determine.

(3) The Secretary shall, through a notice published in the FEDERAL REGISTER—

(i) Solicit nominations from the public for members of the National TAC; and

(ii) Publish the list of members, once selected.

(4) The Secretary shall screen nominees for membership on the National TAC for potential conflicts of interest to prevent, to the extent possible, such

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conflicts, or the appearance thereof, in the National TAC’s performance of its responsibilities under this section.

(c) The Secretary shall use the National TAC to provide its expert opinions on matters that arise during the State Plan review process.

(d) The Secretary shall prescribe and publish the rules of procedure for the National TAC.

(Authority: 20 U.S.C. 6311(e))

[73 FR 64510, Oct. 29, 2008]

§§ 200.23–200.24 [Reserved]

SCHOOLWIDE PROGRAMS

§ 200.25 Schoolwide programs in general.

(a) *Purpose.* (1) The purpose of a schoolwide program is to improve academic achievement throughout a school so that all students, particularly the lowest-achieving students, demonstrate proficiency related to the State’s academic standards under §200.1.

(2) The improved achievement is to result from improving the entire educational program of the school.

(b) *Eligibility.* (1) A school may operate a schoolwide program if—

(i) The school’s LEA determines that the school serves an eligible attendance area or is a participating school under section 1113 of the ESEA; and

(ii) For the initial year of the schoolwide program—

(A) The school serves a school attendance area in which not less than 40 percent of the children are from low-income families; or

(B) Not less than 40 percent of the children enrolled in the school are from low-income families.

(2) In determining the percentage of children from low-income families under paragraph (b)(1)(ii) of this section, the LEA may use a measure of poverty that is different from the measure or measures of poverty used by the LEA to identify and rank school attendance areas for eligibility and participation under subpart A of this part.

(c) *Participating students and services.* A school operating a schoolwide program is not required to—